

REMARKS

In this office action the Examiner objected to the disclosure because of informalities. Applicant has amended the specification to correct the informalities. However, one of the informalities indicated by the Examiner was amended in a different way than that suggested by the Examiner. On page 4, line 13 where the Examiner indicated the specification should be changed to "first means 14" instead of "second means 14", the specification was amended to read "second means 18".

Applicant respectfully requests that the Examiner withdraw the objection to the disclosure because of informalities.

The Examiner rejected claims 1-12 under 35 U.S.C 103(a) as being unpatentable over Demshki Jr. (US006004005A) in view on N. Meyerowitz (US002979605). To support the rejection the Examiner stated, "In regard to claim 1, 6, and 8 - 12, Demshki, Jr. in Figure 1 discloses a track lighting fixture (10) with a fixture track (14) for securing the lighting system to a surface, a projection (bracket) assembly (46) with lock (50) to secure the cylindrical housing (16) containing the transformer and power leads to illuminate a plurality of incandescent lamps (MR 16) in fixtures (12) to the track (14), which also contains 2 hot and 2 common electrical contacts (52). Demshki, Jr. does not disclose a rod for securing the lighting system to an inner surface of a fireplace. N. Meyerowitz in Figures 1,2 and 4 discloses an

expandable tubular post member (10) with rods (32), thumb screw (64), boss (68) with tapered hole (collar), pads (34) and expandable-coiled spring (50). N. Meyerowitz does not disclose for use in a fireplace. Nevertheless, it is old and well known that lighting tracks and rods come in various shapes and colors and they can be mounted on walls, ceilings or between walls and ceilings such as in a fireplace. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use the tubular post member (10) with rods (32), thumb screw (64), boss (68) with tapered hole (collar), pads (34), expandable coiled spring (50) of N. Meyerowitz in place of the fixture track (14) of Demshki, Jr. to support the lighting system between two walls in the fireplace to create a soothing fireplace ambiance that is aesthetically pleasing to the viewers in a room.

In regard to claims 2, 3 and 5, Demshki, Jr. in the Abstract identifies electrical power, but not 110-volt power. Nevertheless, it is old and well known that residential power as well as commercial office space (power outlets) power is 110 volt. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use 110 volt electric power to illuminate the track lighting system of Demshki, Jr. in order to be able to illuminate the fireplace to create a soothing

fireplace ambiance that is aesthetically pleasing to the viewers in a room.

In regard to claims 4 and 7, Demshki, Jr. in Column 3, lines 15 - 18 discloses that any combination of decorative inserts and lamp bulbs can be interchanged. Demshki, Jr. does not specifically disclose colored bulbs or a flasher arrangement to create a twinkle effect. Nevertheless, it is old and well known that colored bulbs are sold in department and hardware stores, where ballasts are also sold to vary voltage to a bulb to create a twinkle effect. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use colored bulbs or a ballast to create a twinkle effect with the track lighting system of Demshki, Jr. in order to be able to illuminate the fireplace to create a soothing fireplace ambiance that is aesthetically pleasing to the viewers in a room."

Applicant believes it is hindsight when the Examiner states that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains to support the lighting system between two walls in the fireplace to create a soothing fireplace ambiance that is aesthetically pleasing to the viewers in a room. The use of lights inside a fireplace is not a commonly perceived thought. There is no teaching or even a suggestion in the prior

art of either Demshki Jr. or Meyerowitz to place a lighting system inside a fireplace.

Using lights in a fireplace precludes the use of the fireplace for burning logs or any other material since any light fixture in such fireplace would be destroyed by any fire in the fireplace. Thus, the fireplace is not to be used for its normal use with such lighting system mounted therein. Applicant believes that it is a conclusion on the part of the Examiner that is completely unsupported by any of the teaching in the prior art. Placing a light fixture or anything containing electrical wires in a fireplace, which could be dangerous unless carefully supervised, was clearly not envisioned in the teaching of any of the prior art references. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-12 under 35 U.S.C 103(a) as being unpatentable over Demshki Jr. (US006004005A) in view on N. Meyerowitz (US002979605).

The Examiner also rejected claims 13 and 14 under 35 U.S.C. 103(a) as being unpatentable over Demshki, Jr. (US006004005A) in view of N. Meyerowitz (US002979605) as applied to claims 1, 8 and 12 above, and further in view of T. A. Stiffel (US002965751).

The Examiner stated, "In regard to claims 13 and 14, N. Meyerowitz in Figure 1 discloses pads (34), but does not specifically discloses elastomeric or rubber pads. T. A. Stiffel in Figure 7 discloses a rubber foot (pad) member (60).

Nevertheless, it is old and well known to pad furnishing legs to protect surfaces from getting scratched. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use the elastomeric rubber pads of T. A. Stiffel with the tubular post lighting system of N. Meyerowitz in order to protect surfaces from getting scratched."

Applicant has discussed previously that there is no teaching or even suggestions in the prior art references which would even remotely suggest the use of a lighting system placed in a fireplace; therefore Applicant respectfully requests that the Examiner withdraw the rejection of claims 13 and 14 under 35 U.S.C. 103(a) as being unpatentable over Demshki, Jr. (US006004005A) in view of N. Meyerowitz (US002979605) as applied to claims 1, 8 and 12 above, and further in view of T. A. Stiffel (US002965751).

In view of the amendment to the specification and the discussion supra it is believed that claims 1-18 are patentable. Therefore, Applicant believes that this application is now in condition for allowance and such allowance by the Examiner is respectfully requested.

In the event the Examiner has further difficulties with the examination and/or allowance of the application, the Examiner is invited to contact the undersigned agent for applicant by

telephone at (412) 380-0725, if necessary, to resolve any remaining questions or issues by interview and/or Examiner's Amendment as to any matter.

Respectfully submitted,
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